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ART UNIT	PAPER NUMBER
2191	

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)
	10/015,855	BISCEGLIA, JOHN F.
	Examiner	**Art Unit**	
	Mary J. Steelman	2191	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>1/10/2005, 8/1/2005</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

    b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

    Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☒ The Notice of Appeal was filed on <u>01 August 2005</u>. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b)☐ They raise the issue of new matter (see NOTE below);

    (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

    NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, ~~the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of~~ how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: <u>1-47</u>.

    Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.

13. ☒ Other: <u>See attachment addressing each argument presented by Applicant.</u>.

DETAILED ACTION

1.   This Advisory Action is in response to Remarks filed 08/01/2005, which reference

Remarks filed 6 January 2005. A Notice of Appeal was received 08/01/2005.

Response to Arguments

2.   Applicant has argued, in substance, the following:

(A) As Applicant has noted, on page 5, 4th paragraph of Remarks filed 10 January 2005, "The

Examiner's motivation is insufficient to support a prima facie case of obviousness regarding the

modification of Ream with Bowman.

Examiner's Response: Examiner disagrees. In response to applicant's argument that there is no

suggestion to combine the references, the examiner recognizes that obviousness can only be

established by combining or modifying the teachings of the prior art to produce the claimed

invention where there is some teaching, suggestion, or motivation to do so found either in the

references themselves or in the knowledge generally available to one of ordinary skill in the art.

See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347,

21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Bowman suggested that his invention (col. 9,

lines 51-53) reduced effort and costs involved with designing, implementing, and maintaining...

It.would have been obvious, to one of ordinary skill in the art, at the time of the invention, to

modify Ream's suggestion of using a developer and system to improve efficiency [0009], by

including a team of developers, as disclosed by Bowman-Amuah, because a team of (col. 5, lines

45-51) software engineers (developers) using OOP technology enable "improved quality of the

software as well as an increased speed of its development." Col. 8, lines 23-26, "Thus, through

the development of frameworks for solutions to various problems and programming tasks,

significant reductions in the design and development effort for software can be achieved."

(B) As Applicant has noted, on page 7, 3rd paragraph of Remarks, "The Examiner has not

presented a reasonable expectation of success when combining Ream with Bowman.

Examiner's Response: Examiner disagrees. (Abstract) Ream disclosed a system including a

build server and build generating station. A build server is connected to a recipient computer via

a network. The build generating stating includes software for generating build plans, including

instructions for executing software. The method involves creating a build plan defining software

to be installed, transferring the build plan. Ream suggested the importance of a rapid

configuration [0007], and efficiency in a build [0009]. Ream failed to provide specific details

related to the "business" of software development, such work done by a group of developers and

contract conditions. However, Bowman-Amuah, (Abstract) who also disclosed a software build

environment, disclosed more details related to the software engineering efforts used by

developers. Ream's invention, modified by Bowman-Amuah's invention, suggests that one

skilled in the art, at the time of the invention, may successfully use known business practices to

build software using tools and business procedures to improve performance and efficiency.

(C) As Applicant has noted, on page 8, last paragraph, 'the proposed modification or combination of the prior art would change the principle of the operation of the prior art invention being modified, would render the prior art invention being modified unsatisfactory for its intended purpose, thus there is no suggestion to make the proposed modification.

Examiner's Response: Examiner disagrees. The combination of Bowman-Amuah is introduced to expand the level of details provided by the primary reference, Ream. The proposed modification / combination of prior art merely provides more details related to a group of developers, using business practices to produce a software build. Ream disclosed that developers were involved with a build request and that certain business practices, using a build plan and feedback, were followed to ensure a satisfactory delivery of the product.

Applicant has argued every limitation of every claim. Below Examiner explains the relevance of the cited art as applied to each limitation.

(D) Regarding claims 1, 15, 26, and 37, as Applicant has noted, Ream / Bowman fails to disclose:
- (page 10, last paragraph of Remarks) receiving a first request comprising a description of said development environment and said software application to be developed, wherein said development environment comprises hardware components and software components:

Examiner's response: Examiner disagrees with Applicant's argument that the build definition

provides an identification of only software, not including hardware and that a request is not

received. Bold passages below point to the location in the Ream reference that discloses 'a

request is received'. A build request for a recipient computer (comprises hardware components)

to load software (comprises software components) is received. It would be inherent that the

recipient computer is identified.

(Ream: [0036], "The build generating platform includes build generating software for

generating a build plan. The build generating software **receives a desired build definition**

(receives a request) from a person desiring to have software installed onto a recipient computer (-

receiving a first request comprising a description of said development environment and said

software application to be developed)...", [0044], "...a **build definition is received** from a

build requester...the build plan may instruct the **recipient computer (hardware) to**

sequentially load software (software) packages...") (emphasis added)

-(page 11, 2nd paragraph) reviewing said first request in accordance with control information for

managing said first request;

Examiner's Response: Text related to FIG. 2 is found at [0043-0044]. The basic process for

accomplishing automated builds of a recipient computer: build definition is received, build plan

may be generated, build plan may be transferred. It is inherent that receiving and generating

plans includes reviewing in accordance with control information for managing... How else

could a build be generated except by reviewing / managing the request?

(Ream: FIG. 2, #200-build definition is received, #202-build plan generated)

-(page 11, last paragraph) assigning said first request to one or more developers;

Examiner's Response: Request is assigned to the build plan generator. Ream disclosed that a

writer (developer) ([0053]) might define some install parameters via a command line. Ream

failed to show a group of developers working on a development environment, but did suggest

that [0036] build generating software (a tool) receives a desired build definition from a person (a

developer), to provide information regarding a desired build directly to the build generating

platform. Examiner has further provided the Bowman reference for disclosing a group of

developers involved with the build process. Bowman-Amuah disclosed **developers** involved

with the development environment at col. 11, lines 28-44, "Together, these teams support the

efforts of the **System Building team**, which is **charged with the analysis, design, build, and**

test of the system to be developed." It is inherent that a developer, as disclosed by Ream, or a

group of developers, as disclosed by Bowman are 'assigned' a request when they define install

parameters/ or otherwise support a build effort.

-(page 12, 2nd paragraph) establishing said development environment upon said processing said

first request;

Examiner's Response: Applicant argues that Ream teaches installing software, but fails to teach establishing a development environment... Examiner disagrees. Ream does teach installing software, but Ream also teaches a "build generating station that includes software for generating build plans (Abstract, lines 7-8)." A build generating station is a development environment. A received request involves creating a build environment suitable for the target hardware and providing suitable software.

-(page 13, 2nd paragraph) monitoring said development environment asynchronously for violations of conditions established by said control information.

Examiner's Response: Examiner disagrees. Ream monitors for violations (inherently asynchronously) and [0044] notifies the build requester if the build was not successful. Claim limitations are not specific regarding the type of 'condition' violated. Furthermore, Bowman-Amuah disclosed (col. 2, lines 18-21), "...building systems in a development architecture framework. Requirements are specified for both a system to be built and an implementation strategy to fulfill the requirements." Col. 2, lines 28-29, "The system is tested (monitored) to ensure that the requirements are fulfilled." Col. 2, lines 49-53, "...the system may be tested using tools such as test data management tools, test data manipulation tools, test planning tools, test execution tools, performance management tools, emulation tools, test result comparison tools, and test coverage measurement tools."

(Ream: [0044], "Once the software package has been installed, the recipient computer may verify **(monitor for violations)**...") Furthermore, Bowman-Amuah disclosed (col. 2, lines 18-

21), "...building systems in a development architecture framework. Requirements are specified

for both a system to be built and an implementation strategy to fulfill the requirements." Col. 2,

lines 28-29, "The system is tested (monitored) to ensure that the requirements are fulfilled." Col.

2, lines 49-53, "...the system may be tested using tools such as test data management tools, test

data manipulation tools, test planning tools, test execution tools, performance management tools,

emulation tools, test result comparison tools, and test coverage measurement tools **(monitor**

asynchronously)." Col. 11, lines 1-5, "When a new development environment is put in place,

the developers need to learn not only how each individual tool works, but also how the tools

work together to support the organization as it performs well defined processes" Bowman-

Amuah disclosed developers involved with the development environment at col. 11, lines 28-44,

"Together, these teams support the efforts of the System Building team, which is charged with

the analysis, design, build, and test of the system to be developed." (emphasis added)

(E) Regarding claims 2, 16, 27, and 38, as Applicant has noted, Ream / Bowman fails to

disclose:

-(page 14, 1st paragraph) identifying a violation of a condition;

Examiner's Response: Applicant argues that verifying the completion of execution of the build

plan, by logging success or failure of the installation does not read on the limitation. Examiner

disagrees. Inherently a 'condition' of a build plan is to build software that may successfully be

installed on a hardware device. In this case, the recipient computer monitors for violations of

properly defined and build software.

(Ream: [0044], "Once the software package has been installed, the recipient computer may verify (monitor for violations)...", [0066], "...build plan may write an entry to an event log evidencing the success or failure (violation of a condition)...")

-(page 14, 1st paragraph) notifying a developer of said violated condition.

Examiner's Response: Examiner disagrees. The cited reference points to "another person" (developer) to be notified.

(Ream: [0044], "...the build requester or another person can be notified...")

(F) Regarding claims 3, 17, 28, and 39, as Applicant has noted Ream / Bowman fails to disclose:

-(page 14, 2nd paragraph) inserting information of said violation of said condition in a report;

Examiner's Response: Examiner disagrees. The cited reference points to a 'written entry' (inserting information of said violation) in the logged report.

(Ream: [0044], "...the build requester or another person can be notified...", [0066], "...build plan may write an entry to an event log evidencing the success or failure...")

-(page 15, 1st paragraph) issuing said report to a customer.

Examiner disagrees. The cited reference points to 'the build requester or another person', either

which could be 'a customer', to be notified.

(Ream: [0044], "...the build requester or another person can be notified...")

(G) Regarding claims 4, 18, 29, and 40, as Applicant has noted, Ream / Bowman fails to

disclose:

-(page 15, 2nd paragraph) inserting information on a status of said development environment in a

report;

Examiner's Response: Applicant argues that cited passage fails to teach a report, inserting

information on the status of development, or issuing a report to a customer. Examiner disagrees.

An 'event log' reads on a 'report'. As noted above, the success / failure 'report' may notify 'a

customer'

(Ream: [0044], "...the build requester or another person can be notified..." Ream: [0064],

"...may cause an event log to be created...record specific events...used to contain messages

related to the success or failure of the installation of individual software packages, or of errors

which occur during execution of the build plan. An event log may also be used to contain status

values or flags used during the execution of the build plan...")

-(page 15, 2nd paragraph) issuing said report to a customer.

Examiner disagrees. Cited reference points to a 'person' (customer) may be 'notified' (issuing),

which reads on the limitation.

(Ream: [0044], "...the build requester or another person can be notified...")

(H) Regarding claims 5, 19, 30, and 41, as Applicant has noted, Ream / Bowman fails to disclose:

-(page 16, 2nd paragraph) control information comprises one or more of the following: a statement of work, a profile of a server implemented in said development environment, a profile of a network component implemented in said development environment, and a profile of said development environment.

Examiner disagrees. A build definition converted into a build plan, reads on the limitation of 'a statement of work' and 'control information'. Furthermore, it is inherent that 'control information' related to the build encompasses the development environment.
(Ream: [0036], "The build generating software converts a build definition (statement of work) into a build plan (control information)...",[0038], "The recipient computer may be intended to be a server (profile of a server)...", [0040], "If the build server and the recipient computer are not co-located, an Internet connection (profile of a network component) may be provided, such that data can be transferred from the build server to the recipient computer over the Internet...")

(I) Regarding claims 6, 19, 20, 31, and 42, as Applicant has noted, Ream / Bowman fails to disclose:

-(page 17, 2nd paragraph) said statement of work comprises standards for hardware components and software components in said target environment, wherein said statement of work comprises contract conditions.

Examiner's Response: Examiner disagrees. A build definition (statement of work) for a target environment inherently involves the related hardware and software.'
(Ream: [0036], "The build generating software converts a build definition (statement of work) into a build plan ...", [0050], Dependencies are considered. "...ensure that all programs or services which are required (contracted for) to be installed first are installed before a requested program.") See 'contract conditions' discussed below.

-(page 18, 1st & 2nd paragraphs) Ream / Bowman failed to specifically note 'contract conditions.'

Examiner disagrees. As an example, a Service Level Agreement reads on 'contract conditions.' Amuah-Bowman disclosed (col. 30, line 48- col. 31, line 3), "In order to plan and organize the development work appropriately, a Service Level Agreement (SLA) (contract conditions) must be in place between the Service Management group (typically part of the Environment Management team) and the developers...Specification of service levels should be precise and the service must be measurable..."

(J) Regarding claims 7, 21, 32, and 43, as Applicant has noted, Ream / Bowman fails to disclose:

-(page 18, last paragraph) said server profile comprises a description of said server implemented

in said development environment.

Examiner's Response: Examiner disagrees. Ream disclosed that software may be developed for

a server.

(Ream: [0036], "A build definition may include identification of a desired operating system, as

well as of specific software applications or updates of applications desired to be installed on a

recipient computer...", [0038], "The recipient computer is a computer onto which it is desired to

install software. The recipient computer **may be intended to be a server** used to host an

application...")

(K) Regarding claims 8, 22, 33, and 44, as Applicant has noted, Ream / Bowman fails to

disclose:

-(page 19, 2nd paragraph) said network component profile comprises a description of said

network component implemented in said development environment.

Examiner's Response: Examiner disagrees. A build definition may include a network

component profile for a communication connection.

(Ream: (Ream: [0036], "A build definition may include identification of a desired operating

system, as well as of specific software applications or updates of applications desired to be

installed on a recipient computer...", [0038], "The recipient computer is a computer onto which

it is desired to install software. The **recipient computer preferably includes a communication**

connection (network component profile for a communication connection) with a build server,

such as through interfaces and network connected to a network...") (emphasis added)

(L) Regarding claims 9, 23, 34, and 45, as Applicant has noted, Ream / Bowman fails to

disclose:

-(page 20, 2nd paragraph) said profile of said development environment comprises a description

of said hardware components and said software components of said development environment,

wherein said profile of said development environment comprises a description of said software

application to be developed.

Examiner's Response: Examiner disagrees. A build definition reads on the limitations of

hardware and software components of the development environment and a description of said

software application to be developed.

(Ream: [0044], "...build definition is received from a build requester...")

(M) Regarding claim 10, as Applicant has noted, Ream / Bowman fails to disclose:

-(page 21, 1st paragraph) said processing said first request comprises updating a profile of a

server implemented in said development environment, wherein said server profile comprises a

description of said server implemented in said development environment.

Examiner's Response: A plan generation inherently comprises updating a profile / describing a

server that may be implemented.

(Ream: [0045], "…generation of the plan may involve selecting software components to be installed on the recipient computer, and grouping pre-determined installation packages together to form a build plan.", [0081], "The system shown in FIG. 14 also allows a centralized **build information server to be maintained…new revisions…may be released**…requiring that data used by each build generating station be updated to reflect the new revision information…")

(N) Regarding claim 11, as Applicant has noted, Ream / Bowman fails to disclose:

-(page 21, last paragraph through page 22, 1st paragraph) said processing said first request comprises updating a profile of a network component implemented in said development environment, wherein said network component profile comprises a description of said network component implemented in said development environment.

Examiner's Response: Regarding Applicant's comments that teachings do not include a development environment that includes hardware components and software components, Examiner disagrees. Ream disclosed a 'build server (hardware) and build generating station (environment) (Abstract, line 3) which includes software for generating build plans containing instructions for executing (software)…to be installed on a recipient computer (hardware). Regarding the comment that the reference lacks 'updating a profile', Ream disclosed that data used for a build may be updated. Regarding the comment that the prior art fails to teach a network component profile / description, it is inherent that a build to be delivered via a network connection includes such information.

(Ream: [0047], "...recipient computer may be intended to access data necessary to install

software onto the recipient computer **via a network connection, information necessary for**

defining a recipient computer's identity on a network, as well as a destination address where

the data can be accessed, may need to be identified and provided to recipient computer (updating

a profile)...", [0048], "...installation of software across a network may require the presence of

authentication means...", [0081], "The system shown in FIG. 14 also allows a centralized build

information server to be maintained. The centralized build information server may allow

information used in build generating stations to be controlled at a single point. Data defining

parameters and installation instructions for specific software packages may become

obsolete...**data used by each build generating station may be updated** (update profile) to

reflect the new revision information." Network components / software required by a build may

be updated as needed.) (emphasis added)

(O) Regarding claim 12, as Applicant has noted, Ream / Bowman fails to disclose:

-(page 23, 1st paragraph – page 24, 2nd paragraph) said processing said first request comprises

updating profile of said development environment, wherein said profile of said development

environment comprises a description of said hardware components and said software

components of said development environment, wherein said profile of said development

environment comprises a description of said software application to be developed.

Examiner's Response: Examiner disagrees. See bold text below. Information associated with the build generating program inherently comprises a description of said software application to be developed.

(Ream: [0015], "...the system of the present invention includes a build library that contains **installation programs provided by software suppliers**, where the installation programs each configure and install a specific software package onto a recipient computer....may include build generating software, which generates build plans based on software identified as desired to be installed", [0045], "...the generation of the plan may involve selecting software components to be installed on the recipient computer...to form a build plan. **First the process may update information associated with the build generating program**...This update may be accomplished by synchronizing a local build information database...",[0081], "...data used by each build generating station be updated to reflect the new revision information...") (emphasis added)

(P) Regarding claims 13, 24, 35, and 46, as Applicant has noted, Ream / Bowman fails to disclose:

-(page 24, 3rd paragraph) receiving a second request, wherein said second request comprises a request to implement a change in said development environment.

Examiner's Response: Examiner disagrees. Inherently after a failure, a request to implement a change is implied by Ream.

(Ream: [0013], After a failure, **implement a change**, "…and optimally may allow an automated build to be initialized at this point once an installation error has been remedied", [0014], "The use of the build plan may also allow the software components installed to be identified based on the installation programs present in the build library at the time of the build, such that a record can be generated based on the build date and the configuration of the build library to identify what revision levels of software were installed on a particular machine. This may allow **automated updating** to occur…" A change may be made to a particular development environment.) (emphasis added)

(Q) Regarding claims 14, 25, 36, and 47, as Applicant has noted, Ream / Bowman fails to disclose:

-(page 25, 2nd paragraph) receiving a second request, wherein said second request comprises a request to correct a problem detected in said development environment.

Examiner's Response: Examiner disagrees. Requests to correct a problem are inherent in logged events.

(Ream: [0013], At a point of failure, "…and optimally may allow an automated build to be initialized at this point once an installation error has been remedied (request to correct a problem handled)" [0019], "…the process may cause an event log to be written **after the execution of segments of a build plan** (a second segment may generate a second request to correct), such that the event log can be later reviewed to determine whether the build plan functioned properly, and

if not, what software package was not successfully installed...**(correct problem detected)"**)
(emphasis added)

Conclusion

3.   The prior art made of record and not relied upon is considered pertinent to applicant's
disclosure.

Any inquiry concerning this communication or earlier communications from the
examiner should be directed to Mary Steelman, whose telephone number is (571) 272-3704. The
examiner can normally be reached Monday through Thursday, from 7:00 AM to 5:30 PM If
attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan
Q. Dam can be reached at (571) 272-3695. The fax phone number for the organization where
this application or proceeding is assigned: 571-273-8300.

Any inquiry of a general nature or relating to the status of this application should be
directed to the TC 2100 Group receptionist: 571-272-2100.

Information regarding the status of an application may be obtained from the Patent
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system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mary Steelman

Art Unit: 2191

08/10/2005

WEI Y. ZHEN
PRIMARY EXAMINER